

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
Pat Wood, III and Nora Mead Brownell.

San Diego Gas & Electric Company,
Complainant,

v.

Docket No. EL00-95-035

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents.

Investigation of Practices of the California ISO
and the California Power Exchange

Docket No. EL00-98-034

Removing Obstacles to Increased
Generation and Natural Gas Supply in the
Western United States

Docket No. EL01-47-003

Section 210(d) Proceeding Applicable to
Electric Utilities in California

Docket No. EL01-72-001

ORDER ON REHEARING

(Issued July 16, 2001)

The California Electricity Oversight Board (Oversight Board) filed a timely request for rehearing of the Commission's May 16, 2001 order in this proceeding. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, 95 FERC ¶ 61,226 (2001) (May 16 Order). The Public Utilities Commission of the State of California (California Commission) filed a motion for clarification of the May 16 Order asking the Commission to clarify whether the May 16 Order is subject to

rehearing. In addition, numerous other parties made timely filings that could be considered to be seeking rehearing of the May 16 Order.

The parties to the proceedings have also made filings in response to the Commission's section 210 proposal contained in the May 16 order.

In this order, we announce that we will address all issues raised on rehearing as well as all issues raised in response to the Commission's section 210 proposal in a single future order.

May 16 Order

In the May 16 Order, the Commission:

- (1) provided that any qualifying facility (QF) in the Western Systems Coordinating Council (WSCC) may sell "excess QF power" to third-party-purchasers within the WSCC;
- (2) provided that any California QF may sell 100 percent of its output to third-party purchasers within the State of California, if a court of competent jurisdiction has concluded that the QF may make such sales;
- (3) deferred action on the issue of whether to allow any QF that has not been fully paid by California utilities for past deliveries of power to sell 100 percent of its output to third parties at negotiated rates under bilateral arrangements;
- (4) found that when QFs sell "excess QF power" or when California QFs make sales to third-parties as authorized by a court of competent jurisdiction, the California QFs are permitted to request, under existing agreements and tariffs, and the California utilities must provide, interconnection service and transmission service to effect sales to third-party purchasers; and
- (5) issued a proposal under section 210(d) of the Federal Power Act to require interconnection by California utilities to allow QFs to make third-party sales.

In the May 16 Order, the Commission directed the California QFs and the California utilities to make further filings on which the Commission could make a final decision regarding section 210 issues. The Commission further noted that:

the proposed interconnection order shall not be reviewable in any court, since all determinations made in this order are preliminary. In addition, consistent with 18 C.F.R. § 385.713 (2000), this interconnection order is an interlocutory order not subject to requests for rehearing. The proper time for parties to seek rehearing is after the Commission issues a final order.

95 FERC at 61,782.

Rehearing Requests

In its request for rehearing, the Oversight Board requests clarification that the Commission intended in its May 16 Order to provide that: (1) "excess power" must be sold in California; and (2) the definition of excess power was not intended to abrogate QFs' firm capacity contractual obligations.

In its motion for clarification, the California Commission alleges that the Commission's May 16 Order was ambiguous regarding the right to seek rehearing of the non-section 210 issues addressed in the May 16 Order, and asks the Commission to clarify whether rehearing lies for the non-section 210 issues.

The California Commission further argues that the Commission should have stated that all contractual issues relating to QF sales are properly within the jurisdiction of the California Commission and that the Commission should not have ruled on the requests for emergency relief. The California Commission also states that the Commission should have defined "excess QF power" by reference to existing QF contracts. The California Commission further argues that the Commission should not have left issues of contract determination to "a State court", because it claims the California Commission has jurisdiction to decide the contractual disputes between QFs and utilities. The California Commission points out that it has instituted proceedings investigating the operations of QFs in California. These issues raised by the California Commission in essence seek rehearing of the non-section 210 portions of the May 16 Order.

Numerous other parties made filings in response to the Commission's May 16 Order. The pleadings were purportedly in response to the Commission's directive that the parties make filings on which the Commission could base a final order concerning its section 210 action. None of the other responses were labeled requests for rehearing or clarification. However, many of these pleadings raised issues which could properly be considered to be seeking rehearing of the non-section 210 portion of the May 16 Order. In this regard, most QFs or groups representing the interests of QFs ask the Commission to expand the relief granted in the May 16 Order, while Southern California Edison

Company and Pacific Gas and Electric Company have both questioned the Commission's authority to grant relief and have urged the Commission to limit the relief granted.

Discussion

We believe that it is appropriate to address in a single future order the issues raised by all parties in pleadings filed in response to the Commission's May 16 Order. The only pleading which was labeled a request for rehearing was filed by the Oversight Board. However, many of the other pleadings, including those filed by the California Commission, many QFs and the California utilities, in effect sought rehearing of the non-section 210 portions of the Commission's May 16 Order. While the Commission's language in the May 16 Order relating to the interlocutory nature of that order was intended to apply only to the section 210 portion of the May 16 Order, our intent was misunderstood as evidenced by the California Commission's request for clarification, and the failure of many parties to state that they were seeking rehearing. Given the interrelated nature of the issues in this proceeding, we believe that it is appropriate to address all issues relating to interconnection and transmission obligations in a single future order.

Thus we will later address the issues that arise under section 210 of the FPA, and were properly raised in pleadings addressing the provisional section 210 order, and at the same time we will address the issues arising under other sections of the FPA (that can properly be considered as seeking rehearing of other portions of the May 16 order). We therefore will defer addressing the issues raised on rehearing by the Oversight Board, by the California Commission, and by others¹ until we address all the related issues raised in the pleadings filed in response to the May 16 Order. We anticipate action on these issues in the near future. We note that upon issuance of that order, all parties will have the opportunity to seek rehearing of it.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

¹By this action, the requests for rehearing have not been deemed denied by operation of law. See 18 C.F.R. § 385.713(f) (2000).

